



12L-4104900940 -

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20545-0001

January 29, 1996

QA: N/A

MOL.20010725.0140

Ms. Susan Offerdal
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Ms. Offerdal:

At the December 11, 1995, meeting between the Environmental Protection Agency (EPA) staff from the Office of Compliance and Enforcement and the Nuclear Regulatory Commission (NRC) staff from the Office of Nuclear Materials Safety and Safeguards (NMSS), you requested the enclosed document, NMSS Policy and Procedures Letter 1-50, Revision 1, "Environmental Justice in NEPA Documents". Please note that NRC intends to revise the procedure. At this time, we are waiting for a number of documents before we proceed with the review, e.g., the Council on Environmental Quality guidance and the Louisiana Energy Services Board decision.

If you or any of the EPA regional environmental justice staff have any questions, please call me at (301) 415-2598.

Sincerely,

Maria Lopez-Otin
Federal Liaison

Enclosure
As stated

cc: Dr. Clarice Gaylord, Director
Environmental Protection Agency
Environmental Justice Office
401 M Street, S.W.
Washington, DC 20460



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20545-0001

April 21, 1995

MEMORANDUM TO:

NMSS Division Directors
NMSS Branch Chiefs
NMSS Section Leaders

FROM:

John J. Linehan,
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Material Safety
and Safeguards

A handwritten signature in dark ink, appearing to read "J. Linehan".

SUBJECT:

NMSS POLICY & PROCEDURES LETTER 1-50, Revision 1
"ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS"

The attached NMSS Policy & Procedures (P&P) Letter 1-50, Revision 1 provides revised guidance for addressing the issue of environmental justice in NEPA reviews. Environmental justice will still be addressed in all Environmental Impact Statements, but will only be considered for special case Environmental Assessments. Management (Division Directors/Branch Chiefs) will make the determination that an environmental justice evaluation should be included in an Environmental Assessment. The agency will consider the Council on Environmental Quality (CEQ) guidance on environmental justice once it is issued, and this interim procedure will be revised as appropriate.

Please review this revised procedure and disseminate the information to the appropriate staff. This procedure is effective immediately and will remain in effect until the CEQ guidelines are issued.

If you have any questions, please contact Merri Horn, FCSS, at 415-8126.

Attachment: NMSS P&P Letter 1-50, Revision 1

cc: C. Hehl, RI
J. Stohr, RII
S. Ebner, RII
C. Pederson, RIII
S. Collins, RIV

645042500 7 XA

ENVIRONMENTAL JUSTICE IN NEPA DOCUMENTS

BACKGROUND:

On February 11, 1994, The President signed Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" which directs all Federal agencies to develop strategies for considering environmental justice in their programs, policies, and activities. Environmental justice is described in the Executive Order as "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The NRC will consider the Council on Environmental Quality (CEQ) guidelines on how to take environmental justice into account when preparing documents under the National Environmental Policy Act (NEPA) when they are issued. This procedure provides interim guidance on where and how environmental justice is to be handled in NEPA documents. When the CEQ guidelines are available, this interim procedure will be revised, as required.

POLICY:

It is the policy of NMSS to address environmental justice in every Environmental Impact Statement (EIS) and every supplement to an EIS that is issued by NMSS. Except in special cases, environmental justice need not be addressed for Environmental Assessments (EA) in which a Finding of No Significant Impact (FONSI) is made.

For EAs with a FONSI determination, the staff concludes as part of its analysis that there will be no significant impacts from the action. Therefore, there would be no disproportionately high and adverse effects or impacts on members of the public, including minority or low-income populations. Generally, no environmental justice evaluation need be performed. However, there will be special cases where environmental justice reviews will be required for actions in which an EA/FONSI is prepared. These cases may include regulatory actions that have substantial public interest, decommissioning cases involving onsite disposal in accordance with 10 CFR 20.2002, decommissioning/decontamination cases which allow residual radioactivity in excess of release criteria, or cases where environmental justice issues have been previously raised. Management (Division Director/Branch Chief level) will decide on a case-by-case basis when special circumstances exist that require the staff to perform an environmental justice review for an EA.

The level of discussion on environmental justice will vary based on the circumstances of each action. The actual determination of impacts will not change, the evaluation and analysis will be expanded. Environmental justice is a different manner of characterizing the impacts; it does not identify new impacts to analyze, although it does involve the collection of additional data. Each EIS or special case EA should contain a section that fully describes the environmental justice review process; the length of the section depends on the circumstances. Guidance is provided below.


PROCEDURES:

1. The first step in evaluating environmental justice potential is to obtain demographic data (census data) for the immediate site area and surrounding communities. Data for the State, county, and town will also be necessary. The demographic data should consist of income levels and minority breakdown. For the purpose of this procedure, minority is defined as individuals classified by the U.S. Bureau of the Census as Negro/Black/African American, Hispanic, Asian and Pacific Islander, American Indian, Eskimo, Aleut and other non-White persons. Low-income is defined as being below the poverty level as defined by the U.S. Census Bureau.

Guidelines for determining the area for assessment are provided in the following discussion. If the facility is located within the city limits, a 0.56 mile radius (1 square mile) from the center of the site is probably sufficient for evaluation purposes; however, if the facility itself covers this much area, use a radius that would be equivalent to 0.5 miles from the site. If the facility is located outside the city limits or in a rural area a 4 mile radius (50 square miles) should be used. (EPA is currently using 1 square mile and 50 square miles for their environmental justice profiles; they use both for each site.) These are guidelines, the geographic scale should be commensurate with the potential impact area (i.e. if impacts are predicted out to 5 miles, a 5 mile radius should be used.) The goal is to evaluate the "communities", neighborhoods, or areas that may be disproportionately impacted. You may want to consider an incremental radius (for example, if a 4 mile radius is chosen, also obtain data for the 1, 2, and 3 mile radii.) The specific census data may be difficult to obtain; one possible source is the Geographic Information System. Other sources include the applicant, local governments, state agencies, or local universities. It is recommended that you utilize the Census Bureau's 10-year census for data on minorities and income level. The Census Bureau's 10-year census data has poverty thresholds that should be used for determining the number of economically stressed households.

Use the best available information.

Use the demographic data to determine the percent minority representation and the percent of economically stressed households. These percentages should be calculated for the site area, town, county and State. Describe the demographic data in the environmental justice section of the document.

The next step is to compare the area's percent of minority population to the state and county percentage of minority population and to compare the area's percent economically stressed households to the state percent of economically stressed households. Note that the jurisdiction that the area percentage is compared to is dependent on the geographic area used in describing the demographics. (It is possible that the geographic area could cross county and state lines and this should be considered when making comparisons.) If the area percentage exceeds that of the state or county percentage (or the comparison base used) for either minority population or economically stressed households by 20 percent, the site does have an environmental justice potential and environmental justice will have to be considered in greater detail. Additionally, if either the minority or low-income population percentage exceeds 50 percent, environmental justice will have to be considered in greater detail. If neither criterion is met, the site does not have an environmental justice potential and no further evaluation is necessary. Document the conclusion in the environmental justice section.

2. Once it is determined that a site does have a potential for an environmental justice concern, it is then necessary to determine if there is a "disproportionately high and adverse" impact (human health or environmental effect) to the minority or low-income population surrounding the site. This does not involve determining if there are any new impacts; impacts of the proposed action are to be determined in the usual manner. The impacts should be evaluated to determine those that affect these populations. In considering the impacts to the populations, differential patterns of consumption of natural resources should be considered (i.e. differences in rates and/or pattern of fish, vegetable, water and/or wildlife consumption among groups defined by demographic factors such as socioeconomic status, race, ethnicity, and/or cultural attributes.) The impacts to the local area surrounding the site should be summarized in the environmental justice section. It is not necessary to discuss the impacts at the same level of detail as in the impact sections. It is acceptable to briefly mention the impact and reference the section where it is discussed in greater detail.

001-754 2011067 10:00 122-4104300340 11:00

The next step is to determine if the impacts disproportionately impact the minority or low-income population. Are the impacts greater for these populations? Are there any impacts experienced by these populations that are not experienced by others? In cases where the population is located next to the site, the impacts or potential for impact will likely be disproportionate for these populations. For instance, potential exposure to effluents may be greater to those living closest to the facility, noise and traffic may disrupt nearby residents to a greater extent than those living far from the site, and the potential risk due to accidents may be greater for nearby residents. If there are no disproportionate impacts, environmental justice is not an issue, no further analysis would be needed. Document the findings in the environmental justice section.


Next, it is necessary to determine if the impacts are high and adverse. Another way of stating this is: are the impacts significant, unacceptable or above generally accepted norms such as regulatory limits or state and local statutes and ordinances. Each impact should be reviewed for significance. If the statement can be made that none of the impacts are significant, then there are no disproportionate adverse and high impacts on the minority or low-income populations. Document the conclusion in the environmental justice section.

1. If there are significant impacts to the minority or low-income population, it is then necessary to look at mitigative measures and benefits. Determine if there are any mitigative measures that could be taken to reduce the impact. Discuss the measures. Discuss the benefits of the project to surrounding communities. Benefits to a specific group may be difficult to determine, particularly economic benefits. The conclusion at this point is project specific. The conclusion may be that there are disproportionately high and adverse impacts to minority and low-income populations; however, the mitigative measures and/or the benefits of a project outweigh the disproportionate impacts. If this is not the case, the facts should be presented so that the ultimate decision maker can weigh all aspects in making the agency decision. The Executive Order does not prohibit taking an action where there are disproportionate high and adverse impacts to minority and low-income populations.

4. The results of an environmental justice evaluation should be documented in the EIS or special case EA. The document should contain a distinct section on environmental justice even if the demographics do not indicate a potential for an environmental justice concern. If a site has already received an environmental justice evaluation, it is

Office of Nuclear Reactor Regulation

Note to: Hugh Thompson, Jr.
Maria Lopez-Otin
John Hickey
Stuart Treby
Ann Hodgdon
Bill Morris

From: Frank Miraglia 

Date: March 16, 1995

Subject: Interim NRR Procedure for Environmental Justice Reviews

The EDO has directed NRR, NMSS, and RES to develop procedures for considering environmental justice when preparing NEPA documents and to coordinate the procedures with the NRC Environmental Justice Working Group. The procedures are to provide guidance for performing environmental justice reviews on an interim basis until CEQ guidance is received. Attached is NRR's interim procedure for your review. Please provide your comments to Steve Hoffman (MS O-11F23) by March 31, 1995.

Att: As stated

cc: (w/o att)
S. Newberry
F. Akstulewicz
S. Hoffman

INTERIM NRR PROCEDURE FOR ENVIRONMENTAL JUSTICE REVIEWS

BACKGROUND

This procedure provides interim guidance to the Office of Nuclear Reactor Regulation staff on conducting environmental justice reviews for proposed agency actions and implements direction received from the Executive Director for Operations in a memorandum dated December 6, 1994, "State Consultation on Environmental Assessments." The requirement for Federal agencies to consider environmental justice is a result of the February 11, 1994, Presidential Executive Order 12898 mandating that Federal agencies "...make achieving environmental justice a part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations..."

The Counsel on Environmental Quality (CEQ) is developing guidelines on how to integrate environmental justice into the National Environmental Policy Act (NEPA) process. When the CEQ guidelines are available, this interim procedure will be revised, as required.

SCOPE

Until the CEQ guidelines are received, environmental justice reviews will be performed for all actions requiring preparation of an environmental impact statement (EIS) or a supplement to an EIS. Reviews are not normally required for environmental assessments (EAs) in which a finding of no significant impact (FONSI) is made unless warranted by special circumstances.

For EAs with a FONSI determination, the staff concludes as part of its analysis that there will be no significant offsite impacts from the action. If no significant offsite impacts will occur, no member of the public will be substantially affected. Therefore, there can be no disproportionate high and adverse effects or impacts on any member of the public including minority or low-income populations. In these instances, no environmental justice review will be performed. However, under special circumstances, environmental justice reviews may be required for actions in which an EA/FONSI is prepared. These cases may include regulatory actions that involve a significant site modification with an identifiable impact on the environment or that have substantial public interest. Senior management will decide on a case-by-case basis when special circumstances exist that require the staff to perform an environmental justice review for an EA.

DOCUMENTATION

Each EIS and EIS supplement shall contain a section titled, "Environmental Justice," which will either contain the complete environmental justice review or a reference to another document containing the review. If a reference to another document is used, a summary of the review and its conclusions should be included in the EIS section. An EA will only have an "Environmental Justice" section if a review was performed.

ATTACHMENT

8

PROCEDURES

The following guidance should be used when performing an environmental justice review. This interim procedure may not address all situations that may occur. Project Managers should consult with the License Renewal and Environmental Review Project Directorate whenever the need for an environmental justice review is required.

1. Determine whether the regulatory action will be supported by an EIS or by an EA. When the regulatory action requires the preparation of an EIS or a supplement to an EIS, a review of environmental justice must be prepared using the process discussed in paragraphs 2 through 10 below. When the regulatory action involves the siting of new facilities or requires the evaluation of alternative sites, environmental justice information must be developed for each site under consideration.

When the regulatory action is supported by an EA, the reviewer should recommend to management whether unusual circumstances warrant the consideration of potential environmental justice concerns in the EA. The determinations will be made on a case-by-case basis. The current guidance is that environmental justice should be discussed in an EA only when the regulatory action involves a significant site modification with an identifiable offsite impact or is the subject of substantial public interest. When it becomes necessary to discuss environmental justice in an EA, the process outlined in paragraphs 2 through 10 should be followed.

2. In performing an environmental justice review, the following should be considered:
 - a. The review should focus on the action being taken. If the action is, for example, a license amendment, the activities covered by the amendment only should be reviewed, and not the overall impact from the issuance of the original license. This applies even if an environmental justice review was not performed for the original action.
 - b. Cumulative impacts from other facilities in the same area not licensed by the NRC need not be included in the review. Impacts from other facilities licensed by the NRC should be considered to the extent possible.
 - c. The impacts to be reviewed for environmental justice are the same as those normally evaluated for NEPA compliance. It is not necessary to discuss the impacts in the environmental justice review at the same level of detail as in the impacts sections of the EIS. A brief discussion of the impact is acceptable with a reference to another section of the EIS for more detail.

acceptable to reference the previous evaluation and provide a summary of the findings and then add any new information that results from the proposed action. For instance, if environmental justice is included in a license renewal, it would not need to be completely readdressed for a license amendment.

Staff should look at the demographics of a site early in the review process. This will enable the staff to identify affected populations and try to include the affected population in the process. If public meetings are held concerning a specific site, an attempt should be made to include any minority or low-income community in the meeting. Extra measures should be taken to ensure that minority and low-income populations are given the opportunity to participate. This may include holding public meeting in the evenings or weekends or translating notices (and other documents) into a language other than English. If a representative(s) of the affected population has been identified such as an officer of an organized local group or a community leader, the individual(s) should receive notices of meetings and copies of Federal Register notices. During scoping meetings for an EIS, NMSS staff will solicit input on environmental justice issues.

- d. If there are significant impacts on minority or low-income populations, the staff should discuss any mitigative measures that could be taken to reduce the impact.
 - e. A graduated evaluation of impacts may be performed, if appropriate, if the nature of the impact has an identifiable variation within the area or with distance from the source (for example, radiation exposures).
 - ✓ f. When applicable, consumption patterns of populations which principally rely on fish and/or wildlife for subsistence should be considered.
3. During the public scoping process for the EIS, include environmental justice as a discussion topic. Solicit input from groups and or individuals of minority and low-income status concerning any human health or environmental impacts they believe they are incurring in their communities due to the proposed action. Special attention must be taken to ensure that minority and low-income populations are adequately informed and given the opportunity to participate. This may require actions such as holding scoping meetings at night or on weekends when these groups can attend without having to take time off from work; extra announcements in local media, through local churches, and community groups; and issuing announcements and publishing information in a language other than English.
4. Using the input received from the public scoping process and the evaluation of environmental impacts for the EIS, determine the location of environmental impact sites for all adverse human health or environmental impacts which are known to be significant or perceived as significant by groups and/or individuals. More than one environmental impact site may exist if multiple impacts can occur from the proposed action. The size of the areas will vary according to the nature of the impacts and should be consistent with the areas used to review environmental impacts in the EIS. See Figure 1 for examples.
5. Determine the geographic area to be used for the comparative analysis in determining whether a minority or low-income population exists. The geographic area is a larger area that encompasses all of the environmental impact sites (for example, a county or a group of counties). See Figure 1 for examples.

When a regulatory action is being considered that involves alternative site locations, in addition to determining the individual geographic area for each site as defined above, determine an overall geographic area which encompasses all of the alternative site geographic areas (for example, the entire state). See Figure 2 for an example.

If the environmental impact sites overlap more than one state, then the geographic area will encompass parts of each state. The geographic area does not have to follow established boundaries such as county or state lines.

//

6. Determine minority and low-income composition in the geographic area:

- a. Using the most recent U.S. Bureau of the Census decennial census, currently the 1990 Census of Population and Housing, determine the percentage of the total population within the geographic area for each minority category. Minority categories are defined as Black; American Indian, Eskimo, or Aleut; Asian or Pacific Islander; other non-white; and Hispanic origin. For example, a geographic area could be 15 percent Black, 2 percent Asian, and 4 percent American Indian.
- b. Using the most recent U.S. Bureau of the Census decennial census, determine the percentage of the households within the geographic area that are below the poverty level. For performing environmental justice reviews, low-income is defined as being below the poverty level as defined by the Census Bureau.

7. For each environmental impact site, determine the percentage of the total population within the impact site that is minority for each minority category. Likewise, determine the percentage of the total households within the impact site that are below the poverty level (low-income).

If no qualifying minorities or low-income households are identified for any environmental impact site, document the conclusion. The environmental justice review is complete.

8. An environmental justice review must be performed if either (a), (b), or (c) are met.

- a. A minority population exists in an environmental impact site if (1) the percentage of minority within the total population of the environmental impact site exceeds the percentage of minority within the total population of the geographic area by 10 percent or more, or (2) if the percentage of minority within the total population of the environmental impact site is at least 50 percent.

An example of a situation requiring an environmental justice review would involve a minority group that makes up 35 percent of the total population of an environmental impact site while only comprising 25 percent of the total population of the geographic area.

An additional example involves the situation where a minority group makes up 52 percent of the total population of an environmental impact site while only comprising 47 percent of the total population of the geographic area. The group would be considered a minority population in this environmental impact site because they make up more than 50 percent of the entire population in the environmental impact site even though they are not 10 percent greater than the percentage in the geographic area.

According to 10/1/93, SCS
would not have to be
done; Minority is
total impact area < 50%
but not greater than
state avg by more than 10%.

A minority population is also defined to exist if more than one minority group is present and the minority population percentage, as calculated by aggregating all minority persons, meets either of the above-stated thresholds.

- b. A low-income population is considered to be present if the percentage of the households below the poverty level in an environmental impact site is 10 percent or more greater than the percentage of the households below the poverty level for the total geographic area (similar to the example in Item 8.a).
 - c. When multiple sites are being considered, minority or low-income populations must be reviewed for each site as described in (a) and (b) above. In addition, similar reviews should be performed comparing the minority and income data for the environmental impact sites for each alternative site to the larger overall geographic area discussed in paragraph 4.
9. When the review identifies minority and low-income populations:
- a. Assess (qualitatively or quantitatively as appropriate) the degree to which each minority or low-income population is disproportionately receiving adverse human health or environmental impacts as compared to the entire geographic area.
 - b. Assess (qualitatively or quantitatively as appropriate) the significance or potential significance of such adverse environmental impact on each minority or low-income population.
 - c. Provide an assessment of the degree to which each minority or low-income population is disproportionately receiving any benefits compared to the entire geographic area.
 - d. Discuss any mitigative measures for which credit is being taken to reduce environmental justice concerns.
 - e. When alternative sites are being evaluated, perform the same reviews described in Items 9(a) through (d) for each site. For Item 9(a), perform a review comparing the impacts to the larger overall geographic area encompassing all of the alternative sites.
10. Provide the staff's conclusion regarding whether the proposed action will have disproportionately high and adverse environmental impacts on minority and low-income populations.

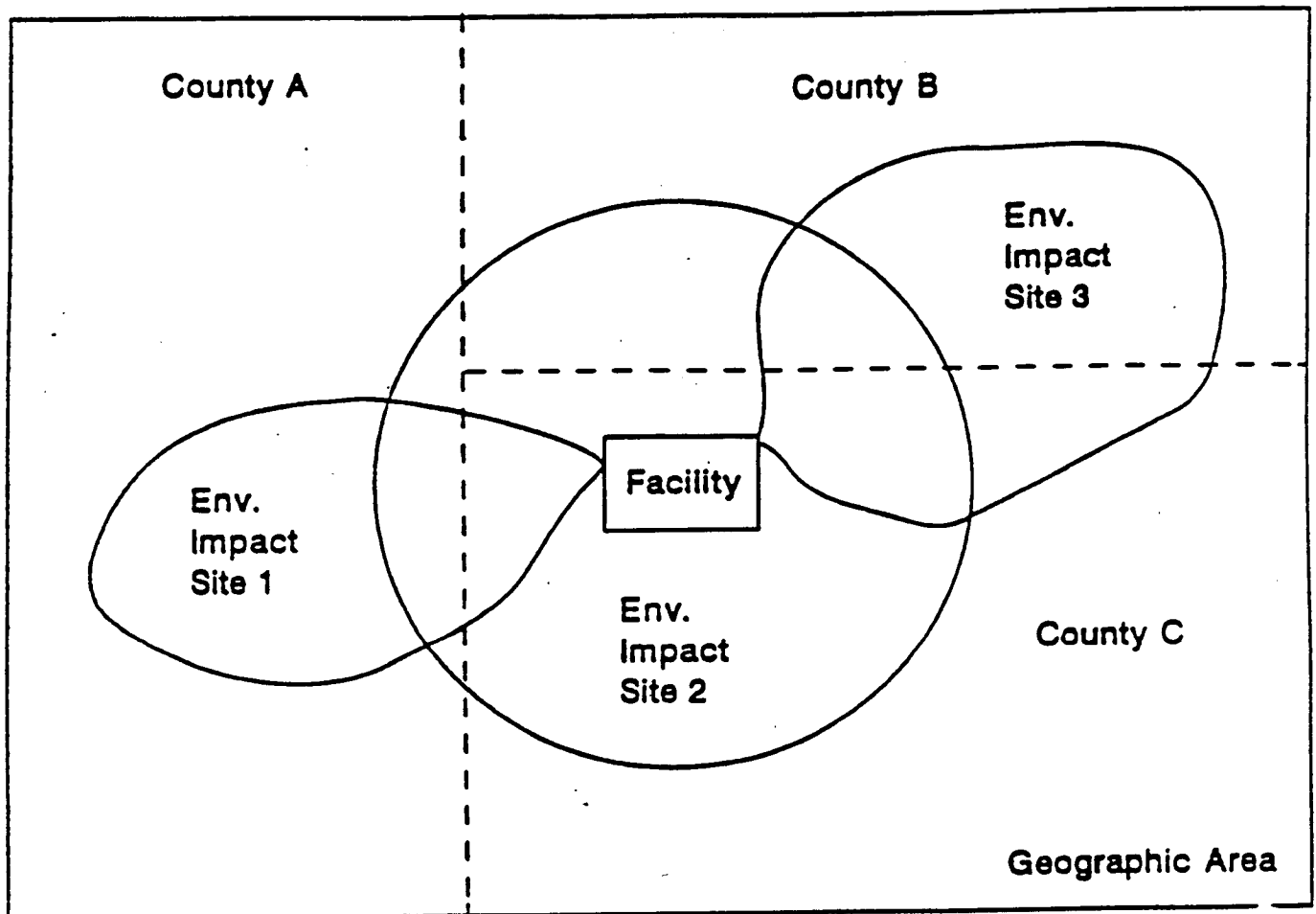


Figure 1
Environmental Impact Sites & Geographic Area

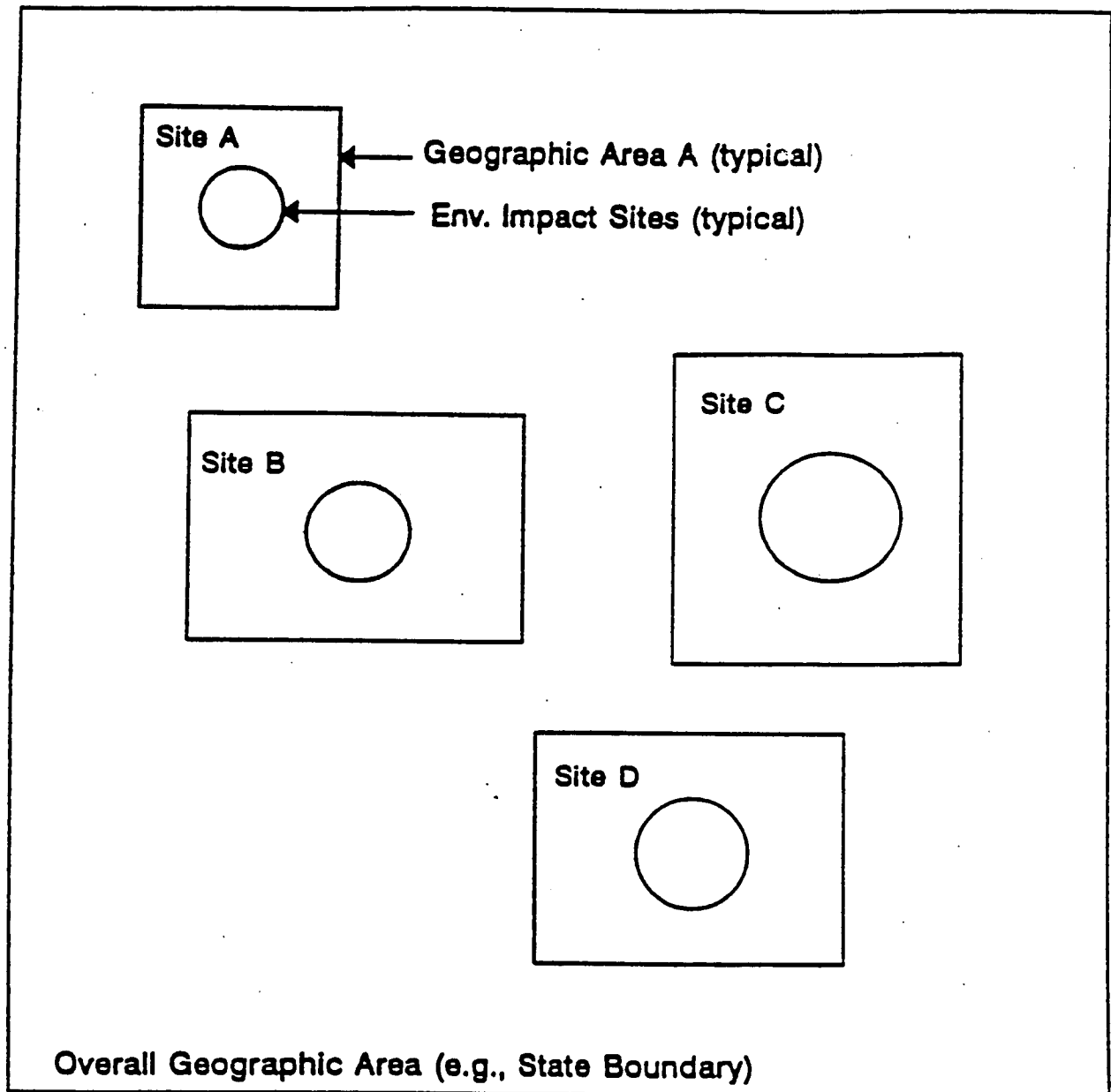


Figure 2
Evaluation of Alternative Sites